IN THE IOWA DISTRICT COURT FOR POLK COUNTY

POLK COUNTY ASSESSOR,	:	
	:	
Petitioner,	:	
	:	CV 6603
vs.	:	RULING RE PETITION
	:	FOR JUDICIAL REVIEW
IOWA DEPARTMENT OF REVENUE,	:	
	:	
Defendant.	:	

This matter came on before the Court on February 27, 2008. The petitioner appeared in person and by his attorneys, James E. Brick, and James E. Nervig. The respondent appeared by its representatives, including Donald D. Stanley, Jr. and James D. Miller as Assistant Attorneys General of the State of Iowa.

The sole issue before the Court was the legality under the Code of Iowa of a recent amendment to the Iowa Administrative Code adopted by the respondent. The disputed amendment amends Rule 701-71.1 Classification of real estate by adding the following language:

> "The assessor shall classify and value property according to its present use and not according to its highest and best use. For example, property currently used as a golf course even though its highest and best potential use may be an industrial park or commercial development."

The plaintiff has filed this petition alleging, in essence, that the rule is contradictory to the statutes of the State of Iowa that are applicable to the assessment of real estate for taxation purposes and is, therefore, beyond the rulemaking power of the respondent and is, accordingly, invalid.

The respondent apparently went through the appropriate procedures and adopted the rule over the objections of the petitioner. There is no contention that correct procedures were not followed.

There are no disputed facts in this case that are material to its resolution. The only controversy is a dispute of law.

In a ruling dated August 21, 2007 the Court determined that the petitioner has standing to challenge the respondent's rules on the basis that it is in conflict with existing statutes.

Although not critical to the Court's analysis, the genesis of the controversy and the challenged rule was a part of the record made before the Court and is of some interest. In assessing what is known as the Willow Creek Golf Course in Polk County, the petitioner obtained an appraisal reflecting the January 1, 2005 valuation of the golf course. That appraisal determined that the "highest and best use" of the property was not as a golf course but for future redevelopment. The owner contacted a representative of the respondent who expressed the opinion that the petitioner's appraiser had proceeded incorrectly. He apparently further expressed the opinion that it had always been the policy of the respondent that appraisals should be based on their current use and not on their "highest and best use." The disputed rule was proposed and adopted to "clarify" the respondent's position and provide guidance to assessors throughout the state.

The respondent promulgated the rule under its mandate and responsibility to prescribe rules to bring about "uniformity and equalization of assessments throughout the state" by providing "standards of value to be used by assessing authorities." (See 421.17(2), the Code.) This Court is required to give appropriate deference to matters that are within the discretion of the respondent. (See Sect. 17A.19(11)(c) and Iowa Ag Construction vs. Iowa State Bd. of Tax Review, 723 NW 2d 167.) However, the power and authority to prescribe rules is limited to those not "inconsistent with law." (See 421.14.) When a rational agency could conclude that a particular rule has been made within its delegated authority, the Court should not reach a contrary conclusion; however, the Court should not allow an administrative body to act in contravention or contrary to the obvious legislative intent. (See City of Marion v. Iowa Dept. of Rev. and Fin., 643 NW 2d 205.)

The statutes of this state are fairly specific in how real estate should be valued for purposes of taxation. Property is to be valued and taxed at its "actual value" with certain statutory exceptions dependent upon the classification of the property in question. (See Sect. 441.21(a)). "Actual value" is the "fair and reasonable market value" and "market

value" is defined as the "fair and reasonable exchange" between "a willing buyer and a willing seller." (See Sect. 441.21(b)).

One of the first steps an assessor must take is to determine the appropriate classification of the property in question. Classification is critical because the Code sets out different methods of arriving at "actual value" depending on the proper classifications. Rule 701-71.1 sets out the various classifications consistent with the Code to assist assessors in arriving at uniform assessments throughout the state. It is undisputed that real estate has been and should be classified based on its present use and not on the basis of any future or anticipated use. Because the disputed additional language has been placed in the rule relating to "classification" and classification has always been based on present use, the respondent contends that the additional language is clarification only and does not constitute any change from its previous position.

The petitioner does not read the new rule in that manner. The added language in 71.1(1) states "shall be assessed and valued," not merely classified. While it is true that Iowa Admin. Code 701-71.5 regarding valuation of commercial real estate has not been amended, either the new rule trumps and negates 701-71.5 or they are at odds with each other. More importantly, the petitioner contends that "highest and best use" is implicit in the concept of "market value" and the "fair and reasonable" exchange value between a "willing buyer and a willing seller" as required by the Code. The petitioner asserts that the statutes require that sales of comparable properties be used to arrive at the market value and comparable sales reflect "highest and best use." The petitioner has used the example of a downtown parking lot. The parking fees only justify a $100,000 value based on the revenue generated. Nevertheless, under the example, comparable downtown properties are being converted from parking or vacant lots to building lots and have been sold for $500,000 apiece. The petitioner contends that under the new rule which the respondent has adopted the parking lot could be assessed only at its present use value of $100,000.

The respondent contends that the petitioner has misinterpreted the new rule. The respondent contends at page 11 of its trial brief that the petitioner has arrived at its interpretation of the rule without consulting the respondent as to the true meaning of the new rule. The respondent then sets out from pages 11-15 of its brief what it means by the

new language. It asserts that the new rule was not intended to restrict consideration of comparable sales. It agrees that the parking lot valuation would require a determination of the value of the lot by the comparable sales method followed by a valuation of the improvements and contends that the new rule does not change the process.

The respondent's brief indicates that the new rule was intended to eliminate what it considers to be a value based on a "speculative highest and best use" when there is no "foreseeable change" in the present use of the subject property. It appears to the Court that the respondent adopted the rule in question because it considered the Willow Creek assessment to be based on a "speculative highest and best use" unwarranted by comparable sales. The respondent further believed that no "foreseeable change" existed which justified the speculative use on which the appraisal was based. The Court is inclined to believe the respondent has attempted to kill an ant with a shotgun. If the respondent was simply trying to eliminate appraisals based on "speculative highest and best use" not supported by current comparable sales, it seems that they could have and should have used such limited language. Except perhaps as to how an appraiser should consider a "speculative highest and best use," the Court doesn't believe there is any dispute between the parties as to how property should be appraised. The real dispute is as to what is meant by the new rule.

Appraising is not an exact science. It is arguable that appraising is an art rather than a science, in spite of the efforts of the respondent, the Appraisal Institute, and other accrediting agencies to make it otherwise. There is always a degree of subjectivity involved in an appraisal. The 2005 appraisal that the petitioner was basing its assessment on was, of course, subject to attack on that basis. The use of "highest and best use" as contained in that appraisal may very well have been unreasonable, speculative, unjustified, and not reflected by market conditions and comparable sales. That does not mean "highest and best use" as a factor in determining market value under the mandates of the Iowa Code can or should be eliminated. Although "highest and best use" is not a term appearing in the Iowa taxation statutes, the concept is implicit in the statutory term of "market value" and exchange value" as used in the jargon of appraisers. To prohibit the consideration of "highest and best use" is contradictory to the statutory concept of market value. The Court has little doubt that the petitioner is misinterpreting the

respondent's intent in adopting the new rule, but words do have meaning and the term "highest and best use" has a specific and accepted meaning to appraisers.

"Highest and best use" is typically referred to as the basic premise in valuing real estate and is uniformly considered in almost all, if not all, formal appraisals. The respondent concedes that "highest and best use" is reflected in the comparable sales in the marketplace that Section 441.21(b) requires be taken into consideration in determining "market value." The respondent contends, however, that its rule cannot be challenged successfully by reason of Sect. 17A.19(10)(l). The respondent's position depends upon reading Sect. 441.21(b) as vesting within the respondent the discretion to define "market value." The court concludes that instead Sect. 17A.19(10)(b) is applicable and that the respondent has not been vested with the discretion to redefine "market value" in the manner set out by the objected to portion of the new rule. Although "highest and best use" is by definition intended to exclude speculative and conjectural uses, if the respondent feels it necessary, it should be free to make such a clarification by administrative rule. This court cannot interpret the objected to portion of the new rule as being so limited. The court cannot distinguish between the method to be used in valuing a golf course and the method to be used in valuing the under used parking lot when applying the new rule.

A fair reading of the new rule by the Court results in the same interpretation that the petitioner has given it. Even though it is in the "classification" section of the rule, it could hardly be clearer that it instructs assessors to value property according to its present use. The only other possible interpretation is that the rule is to only apply to golf courses and the respondent did not state that it intended such a limitation. The respondent correctly argues that both the Constitution and the statutes of the State of Iowa require uniformity in the valuation of property and it is its mandate to achieve that result. Without citation, the Iowa courts have repeatedly held that to be the case. It seems only logical that its rules should convey its intent with as much clarity as possible so as to not create confusion. Each individual assessor, as well as members of the general public, including the courts, shouldn't have to consult the respondent to find out the rule really means something other than what it says or how it is to be applied to different uses within the same clarification.

That portion of Iowa Administrative Code 701-71.1 which states that "The assessor shall classify and value property according to its present use and not according to its highest and best use. For example, property currently used as a golf course should be assessed and valued by the assessor as a golf course even though its highest and best use may be an industrial park or commercial development" is rescinded and declared void as being contrary to statute.

Dated this 7th day of April 2008.

Darrell Goodhue

Judge, Fifth Judicial District